Revenue

App. F IX-4

1927.

(Mar)

File No. 2-27

Previous References

LRS-2 27 & 10, 24
28 & 29

Serial Nos. 162, 187
200,

Later References

General and Revenue Secretariat.

Serial Nos.

Part B for July 28

SUBJECT

Right of Collecting tolls on the Several toll-gates in Bangalore district

To, The President, Dist Bd Bangalore, Thro' the D C Bangalore

No L 122 7 7-28

Directed that the right of Collecting tolls on Several toll gates in Bangalore district be disposed of in accordance with the rules and Conditions Specified in Notification No L 8707/LRS 217-27-1 dated 13 6 28.

HS 24/8/28

£ 5056 App. F III–2]

General and Revenue Secretariat. File No 2 of 1927

Serial No

Petition dated 5/4/28 from D Lakshmi narayya, mail contractor, on the Bangalore-Magadi line, brought to the notice of Government. The hardship in which he has been subjected to, consequent on the issue of notification by the President of the Bangalore District Board, in the matter of the levy of tolls on carriages contracts

First member's orders on P.W.D

"please note on the representation legal aspect" Dated 7/4

urgent Dated R.A 5/4

No. Another petition dated 12/4/28 from the same gentleman on the subject

First member's orders, to send, immediate Dated 16/4

Flag W

1 The proposals of the Bangalore District Board to establish toll-gates were sanctioned in G O No.L.5203-5/L.B 52-27-29 dated 2nd March 1928

2 Under Section 66 of the District Board's Regulation, District Boards may levy tolls on carts, carriages vehicles or animals at toll-gates or stations established along roads and bridges vested in it, at rates sanctioned by Government in

General and Revenue Secretariat. | File No 2 of 192 7 | 2

Serial No.

each case, not exceeding those specified in Schedule III.

3 The President, District Board, has not submitted any proposals for sanction of Government as regards the rates at which tolls have to be levied at each toll-gate newly established.

Flag A 4 On a perusal of the Notification issued by the President regarding sales of the tolls it is seen that he has followed the schedule

Flag B appended to the notification No.R 5942-60/Rm 9-27-11 dated 6th February 1928 which applies only to Provincial toll-gates, instead of the items and rates fixed in Schedule III to District Board's Regulation This is incorrect He has also to obtain sanction of Government even for adopting the rates fixed in Schedule III The President's attention may be invited to these and he may be asked to stay further proceedings and report the circumstances under which he adopted the rates and obtain Government sanction for the rates

Note I 5 The President has also to be informed that until further orders, he should only levy composite fees as laid down in the Government Order of 21st December 1907, under which composition fees should not exceed 1/8th of the total amount of toll payable for 1 year if the vehicle or animal passed the toll-gate once every day

NOTE—Contn. sheet.

WD 6324—GPB—60,000—24-5-27

5707
5058

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General and Revenue Secretariat | File No 2 of 1927 | 3

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Point II The petitioner prays that levy of tolls at the rates now laid down may be given effect to from 1st July 1928 Since the District Board has already taken action in the matter, change of date may not be possible As regrds the rates to be levied, it was already been noted above, that the District Board should obtain Government sanction fixing the rates not exceeding the maxima laid down in Schedule III of District Board's Regulation.

Point III. The next prayer is about recovering 1/4th of the amount of composite fee for the period from 1st April 1928 to 1st July 1928. The amount of composite fee to be levied has already been noted above Regulation provides only for recovery half-yearly or annually So, recovery for part month cannot be sanctioned and the rate fixed in the order of December 1907 is more favourable

Point 4 Lastly, he prays for exemption from payment of tolls, on the ground he carries mails, this can be granted only when the Bus is engaged by the Postal Department exclusively to convey mails, according to the rules issued with Notification No R.8711 L.B 54-18-15 dated 4th February 1920 If passengers are allowed to travel in the Mail Bus, whatever might be the circumstances under which he allows them, he cannot be permitted to claim exemption from the payment of tolls

8794/25/4

9 The Legal Remembrancer may, if necessary, be consulted

10) Submitted for orders

Note—Consequent

5101 App F III—2]

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Subd with draft as per order. The draft for bill leave to be submitted thro the Legal Remembrancer

Ras 25/4

Law Dept 25/4

I feel entertain a doubt regarding
(a) the validity of sanctioning the retro active taken by the Pramukh St B[d] in levying tolls at rates specified in Sch III without the previous sanction of Govt

(b) Sec 66 empowers the St B[d] to levy tolls with the sanction of Govt
This is an extraordinary power vested in a local body to raise by a new tax

(c) All enactments which impose a liability on the public should be strictly construed & the conditions laid down for imposing such liability should be strictly complied
The conditions imposed under Sec 66 are, first, that the District Board must resolve upon levying tolls & Secondly that the rates should be sanctioned by Govt in each case not exceeding those specified in Sch III

NOTE—Contn. sheet

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	17 Unless these conditions are satisfied any toll levied will not be proper or legal
	18 In the present case that there is no resolution of the Bd to levy tolls & no rate is sanctioned by Govt. The power of levying tolls cannot be delegated by the Bd to its President & the last notification by the President inviting tenders long before the Govt sanctioned the establishment of toll gates is illegal & ultra vires –
	19 No sanction of Govt is obtained before the levy is made –
	20 Hence the levy made from 1st April is illegal
	21 Next question is whether Govt can now give its sanction so as to validate the action of the Bd's President
	When the corporation the Bd has not authorised the levy of tolls & the Govt have not sanctioned the rate, the actions & orders have clearly exceeded their statutory powers in recovering the tolls

NOTE—Contn. sheet

WD 6321—GPD—60,000—24-6-37

General and Revenue Secretariat

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Serial No.

- The parties have a right of action to recover the tolls illegally levied
- The question reduces itself into the consideration of the power of Govt to take away the right of the parties to recover the tolls by Sanction exercising their Statutory power of granting Sanction after an illegal levy
- In other words whether the Sanction will have retrospective effect
- In my opinion Govt have no such power under the Statute
- The word 'Sanction' imports the permission to do an act + cannot be understood in the sense of ratifying an act already done -
- It is an accepted principle of law that only voidable when a Contract is voidable it can be enforced by the party waiving his right, Contract cannot be enforced if it is void ab initio.

NOTE—Contn. sheet.

WD 6324—GPB—60,000—24-5-27

App. F III—2]

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In this analogy an illegal act cannot be validated by the action of [illegible] this case

2) Q. How can Govt Law now sanction a rate when there is no resolution of the Bd?

3) These considerations lead me to the view that [illegible] levy cannot be sanctioned, from the 1st April is illegal & that Govt have no power to sanction it

Galbraith with Compts

Bd 28 4-29

Members

Bd 29/5

30) Prepare a draft Draft Revised Law Rules

Bde 4a/5

31) Submitted with a draft for approval of (Ref para 30)

B 5/5/29

Mem type as revised

Bd 6/5

32) Typed draft is submitted

B 7/5/29

Law Rules

Bd 7/5

33) Draft approved

Galbraith with Compts

Bd 8/5

Notes—Continued sheet.

WD 3324—GPD—60,000—24-5-27

General and Revenue Secretariat. File No of 192

DEWAN'S OFFICE
Branch I 20
17 MAY 1928
Reg. No. 1209

Serial No

34) For appl
Joint memo
PRS 11/5/28
11/5

35) 12/5/28
PRS 12/5/28

36) Issue & Submit to Dewan for perusal
PRS 12/5/28

37) [illegible]

38) Issues no L 8156 dt 15-5-28 to the President District Board Bangalore Secy to Govt Bangalore States that in the circumstances explained the notification issued by them is ultra vires and that the levy of tolls at the gates may therefore be stopped pending final sanction of Govt thereto and that action may be taken to place the matter before the District Board and send up suitable proposals to Government in accordance with the above views

39) Submits with reference to Para 36 above for submission to Dewan

40)

Note—Dotted [illegible]

5704/6111

7574/6111 App. F III—2]

General and Revenue Secretariat — File No 2 of 1927

Serial No.

43) Disposal of the rights to collect the arrack at the several toddy farms in the Salem Sanctioned in the Bangalore

44) A draft for a contract in consideration as directed in person yesterday, at the interval given to the President with regard to the matter.

2nd Member

OFFICE OF THE PRIVY COUNCIL
7 JULY 1928
No. 233

45)

46)

39 Issues vide 128 of 9/7/27 of Arrack Bangalore. Breach since rupee collecting tolls on the several Toll-gates in the Bangalore District may be disposed of in accordance with the rules & conditions specified in notification No. 5707 dated 21-7-27 & 13 & 28

NOTE—Cooly Sheets

G R S. 46]

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

GENERAL AND REVENUE SECRETARIAT

No. 1902, dated the 26 7 1928

(LB)

REPLY

No. A 111, dated the 8 Aug 1928

To

The President
District Board
Bangalore

To

The
Secretary to the Government of
H H the Maharaja of Mysore,
General Department.

SUBJECT

Calls for ~~a~~ respective views of the Dt Board on the petition of Dr Lakshminarayana and Mail Contractor Avenue Road Bangalore city

Sir,

I am directed to invite attention to the marginally noted communication and to request that the Government of His Highness the Maharaja may be informed, in the column opposite, of the cause of delay in furnishing a reply and of the approximate date on which reply may be expected.

I am also to request that the reply to this reminder may be sent not later than the ~~a fortnight~~

I have, etc.,

Secretary to Government,
Department.

Sir,

With reference to the marginally noted subject I have the honor to state that a reference was made with this office no A 111-552/27-8 dated 6th June 1928, and the Government have been pleased to issue their order no A 125/A B 52-27-39 dated 7th July 1928 in the matter. Hence the matter is settled and ~~there~~ ~~does~~ no reminder for a further report in the matter does not seem to arise.

I have the honor to be
Your most obedient
Servant

Secretary

Previous reminders

27 JUL 1928

BANGALORE

WD 01795—GPS—5,000—23-4-28

orders have already been issued and no action remaining the connected papers have been returned to us as personally addressed to the

From

D. Lakshminaranaiya,
Postal Mail Motor Contractor,
Avenue Road, Bangalore City

To

Rajasabhabhushana
Chandy Esq , B A ,
First Member of Council,
Bangalore

Sir,

I am the Postal Mail Motor Contractor on the -- Bangalore-Nagadi Line

I beg to submit, on a perusal of the conditions and terms, mentioned in Notification No A 111-552/27-28 dated 24th February 1928 for favour of your kind and -- sympathetic consideration, as follows --

1 The first ground of the said Notification discloses that the levy of tolls at the rates specified in Schedule B noted therein has come to effect from 1st April 1928.

2. Under the heading "Rules" in sub-para (3) of the major para (h), the said Notification discloses that 'no toll shall be levied for the passage of Carriages, carts or animals, &c , if they are engaged by the Postal Department exclusively to carry mails' ---

3 My present representation is in connection with the said two grounds of the said Notification. And I beg to submit that the President of the District Board, Bangalore, might be graciously pleased to direct

(a) that its resolve to establish toll-gates as noted in Schedule A and to levy tolls at the rates specified in Schedule B noted therein be caused to take effect from 1st day of July 1928,

(b)

12

(b) and that in the alternative the Schedule of rates (maximum) of toll in (b) in Schedule B, particularly of the "composite fee in respect of the above" per annum, be caused to be charged and recovered, if not from the 1st day of July 1928, relatively at one/fourth the figure - shown therein from 1st April 1928 to 1st July 1928 only

4. The Postal Department have, when contracts are given, permanently fixed up the time-table disclosing the hour of its start from Bangalore and receipt at Nagadi and Vice Versa in my case and since the timings at which my motor carrying the Royal Mail starts from Bangalore and Nagadi and back are such that no good number of passengers are expected to have accommodation in the Mail Carrying Motor, I may be exempted from paying the rates of toll till the contract expires, regard being also had to the fact that I have been paying road cess also besides other cesses, and that only few of passengers at intervals of weeks, might desire accommodation in the Royal Mail Carrying Motor

5 The numerous buses running to and from Bangalore and - Nagadi and back in different parts of the City have got their own timings and the passenger-traffic find it convenient to find accommodation in those buses for the simple reason that the postal-mail-carrying-motor starting time is most convenient for the general traffic

6. The facts disclosed in para 5 supra supports the truth explained in para 4 supra.

7. I therefore pray that for the abovesaid reasons the - Hon'ble the President of the Bangalore District Board might be pleased to grant the two requests I have respectfully advanced above and to thus relieve me from the anxiety caused in my mind by the issue of the Notification under reference at this unusual time of either the official year or the Calendar Year

Thanking you for this act of your kindness and anticipation

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anticipation of an order, pending decision on this represen tation, permitting me to run the mail bus, uninterrupting the Royal Mails, without payment of the rate of toll as per Notification, on an undertaking from me that I shall be glad to accept whatever decision this office would be arriving at - with reference to all the view-points of my case justly and reasonably.

I beg to remain,

Sir

Your most obedient servant,

S Lakshmi Narasaiah

MAIL CONTRACTOR

Bangalore,
6th April 1928

5101L
12-4-28

From

D. Lakshmimarayaiya,

Postal Mail Motor Contractor,

Avenue Road,

Bangalore City

To

Rajasabhabhushana

K. Chandy, Esq , B A ,

First Member of Council,

Bangalore

Sir,

The Bangalore District Board have been levying tolls from 1st April 1928 at a ten toll gates at rates specified in the President's Notification No.A.122-582/27-28 dated 24th February 1928 Under Section 66 (1) of the District Board Regularion, the Board has to levy tolls at rates sanctioned by Government in each case and not exceeding those specified in Schedule III of the Regulation A comparision of the rates given in the Schedule attached to the said Notification of 24th February 1928 with Schedule III given in the Regulation shows that the District Board is levying on motor vehicles a toll of Rs 2 as against the maximum of one rupee allowed by the Regulation This clearly shows that the District Board has been levying tolls without obtaining sanction to the rates to be levied as required by the Regulation

Under sub-Section (2) of Section 66 of the District Board Regulation, compounding for payment of tolls is permitted for a minimum period of half-year As the levy has taken effect from 1st April 1928, bus owners and others are denied the opportunity to compound for the tolls payable for the current official year

The composition fee of Rs 400 and 200 fixed in the President's Notification of 24th February 1928 is not in accordance with the practice followed by other District Boards In the other Districts persons are allowed to compound for payment of tolls by paying only a fraction of the total amount of tolls

5

payable for the half year or the year as the case may be

In these circumstances, I beg that the District Board may be asked to stop the levy of tolls till they obtain the sanctioned of Government in the usual course in accordance with rates consistent with the provisions of the Regulation. The levy of tolls may be sanctioned from 1st July 1928

The composition fees may be kindly fixed at a small fraction of the total amount of tolls levyable for the half year or the year under Regulation

I beg to remain,

Sir,

Your most obedient servant,

Bangalore,)
11th April 1928)

BANGALORE DISTRICT BOARD

Notification No A 111 552—27 28 *dated 24th February* 1928

1 Subject to the approval of Government the District Board of Bangalore have resolved to establish toll-gates as noted in Schedule A and to levy tolls at the rates specified in Schedule B noted below with effect from 1st April 1928

2 The right of collecting tolls at each of the places noted in Schedule A from 1st April 1928 to 30th June 1928, both days inclusive will be disposed of by inviting tenders by the President of the District Board Bangalore

3 Sealed tenders for the same will be received in the office of the President District Board Bangalore till 5 P M on Monday the 19th March 1928 Each tender must be accompanied by a deposit of Rs. 100 in cash as earnest money and be superscribed TENDER FOR COLLECTING TOLLS AT THE TOLL GATE AT

4 The tenders will be opened by he President District Board The tender accepted will be duly notified in the Notice Board of the District Board Office The acceptance or rejection of any tender will entirely be at the discretion of the President District Board. His decision is final No reasons or replies will be given for the acceptance or rejection of any tender

5 On acceptance of one of the tenders the earnest money on rejected tenders will be returned

6 The successful tenderer hereinafter called the contractor shall within 8 days of the acceptance of the tender execute an agreement on a duly stamped paper binding himself and his heirs to observe the conditions hereinafter set forth and to be subject to the penalties forfeitures and liabilities referred to therein and when he does not hold property in Mysore State shall furnish at least two sureties who own sufficient properties in Mysore State for the due performance of the contract

7 The contractor shall conform generally to the conditions and rules set forth here under or to any changes or modifications to be made on the subject by Government or the District Board from time to time He shall recognise all exemptions made by the statute or rules in force for the time being

8 The conditions and the rules on the subject as also the schedule of maximum rates of toll leviable are given hereunder for general information

9 Any breach of the above conditions or rules on the part of the contractor or his servants will entail the forfeiture of the deposit or the levy of a fine not exceeding Rs 50 for each infringement If the fine be not paid or in the event of instalments or other sums due are not paid within the prescribed date it shall be competent to the President District Board to suspend further collection of toll during the remaining period by a resale or otherwise The resale will be held at the risk of the defaulting contractor be liable to make good all losses accruing but shall not be entitled to any profits arising from the resale

10 The imposition of fine or resale of the contract shall be no bar to the prosecution of the contractor or his employees for any offence or to the institution of other legal steps against them under any law in force for the time being

(*s*) *Condstions*

(*a*) The contract shall not be transferred by sale gift or otherwise or sub-leased without the previous sanction of the President District Board

(*b*) The contract amount shall be paid in equal monthly instalments in advance on the first day of every month to the District Board Office Bangalore

(*c*) The contractor shall have no claim to the fees recovered from persons compounding the payment of toll in accordance with the Standing Rules and orders approved by Government He shall also pay along with the instalments the authorised Local Railway and Education Cesses if any at the prescribed rates

(*d*) Interest at 9 per cent per annum shall be levied on all overdue amounts till date of payment

(*e*) The amount due from the contractor or his sureties shall be recoverable as if they were arrears of land revenue under the provisions of the Land Revenue Regulation and the rules thereunder

(*f*) The contractor shall collect tolls only at the rates and the gates on the traffic specified in Schedules B and A

(g) The contractor shall give to the person paying the toll a proper receipt showing the amount and the date of payment of toll

(*h*) The contractor shall keep at the toll gate true accounts of the daily collections and of the traffic passing through the toll gate These accounts shall be open to the inspection of the President District Board or any other Officer authorised by him He shall if required by the President District Board furnish to the District Board Office or to the Circle Sanitary Inspector s Office to or any other office at the end of every month a true return for the month showing the traffic passing through the in a prescribed form.

Confidential.

To

The President, District Board,

Bangalore

Through the Deputy Commissioner,

Bangalore District

S i r,

A complaint has been received that the District Board have been levying tolls from 1st April 1928 at rates specified in your notification No A 111-552/27-28 dated 24th February 1928 with reference to G O No 5203-5/L B 52-27-28 dated the 2nd March 1928 sanctioning the establishment of some toll gates by the Bangalore District Board. I am directed to state as follows:-

Under Section 66 of the District Board Regulation, District Board may levy tolls on carts, vehicles, etc , on tolls established by them on roads and bridges at rates sanctioned by Government in each case not exceeding those specified in schedule III appended to the Regulation A perusal of the schedule attached to the notification of the 24th February 1928 discloses that the rates are not in strict conformity with those prescribed in schedule III of the District Board Regulation and on the other hand, it is seen that the District Board have adopted the rates sanctioned for the State Fund Tolls gates in their Order No.R 5942/60/R M 9-27-1 dated 6th February 1928

The levy of tolls is an extraordinary power vested in the Boards and it should be exercised in accordance with the conditions imposed, [illegible] the Boards must readjust their levying tolls and the rates [illegible]

20

be sanctioned by Govern ent in each c se not exceeding those specified in sc edule III and it would not be proper or legal to levy tolls unless these conditions are satisfied

In the present case there is no resolution of the Bo rd and no rate is sanc- tioned by Gove nd the pow r of levying tolls annot be transferred by the Board to the Presi t lso he notification issued by you is therefore ultra vires

The levy of tolls at these gates may therefore be stopped pending final decision of Government after which action may be taken to place the matter before the District Board and to send up suitable proposals to Government in accordance with the above views

I have, etc

Asst Secy to Government

Expunge as confidential

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

General and Revenue Secretariat.

Bangalore, Dated, 12-2-1928

No. L 8156/ml 2-27-187

From

R. RANGA RAO, Esq., B.A., B.L.,
General Secretary to the Government of His Highness the Maharaja of Mysore

To

B. Abdur Rahman, Esq., B.A.,
President, District Board, Bangalore.

Through the Deputy Commissioner, Bangalore District.

Sir,

With reference to Government Order No. 5203-5/L.B. 52-27-28 dated the 2nd March 1928 sanctioning the establishment of some toll-gates by the Bangalore District Board, I am directed to state as follows -

A complaint has been received that the District Board have been levying tolls from 1st April 1928 at rates specified in your notification No. A.111-552/27-28 dated 24th February 1928.

Under Section 66 of the District Board Regulation, ~~District Board Regulation~~ District Board may levy tolls on carts, vehicles etc., on tolls established by them on roads and bridges at rates sanctioned by Government in each case not exceeding those specified in Schedule III appended to the Regulation A perusal of the schedule attached to the notification of the 24th February 1928 discloses that the rates are not in strict conformity with those prescribed in Schedule XII of the District Board Regulation and on the other hand, it is seen that the District Board have adopted the rates sanctioned for the State Fund Tollgates in their Order No R. 5943-60/R.M. 9-27-1 dated 6th February 1928.

The levy of tolls is an extraordinary power vested in the Boards and it should be exercised in accordance with the conditions imposed, namely, that the Boards must resolve upon levying tolls and that the rates should be sanctioned by Government in each case not exceeding those specified in schedule XII, and it would not be proper

proper or legal to levy tolls unless these conditions are satisfied

In the present case, there is no resolution of the Board and no rate is sanctioned by Government and the power of levying tolls cannot be transferred by the Board to the President also The notification issued by you is therefore ultra vires

The levy of tolls at these gates may therefore be stopped pending final sanction of Government therefor and action may be taken to place the matter before the District Board and to send up suitable proposals to Government in accordance with the above views

I have the honour to be,

Sir,

Your most obedient servant,

For General Secretary to Government.

Confidential
No.A 111-552/27-28

OFFICE OF THE PRESIDENT,
Bangalore District Board

Bangalore 2nd June 1928

Dear Sir,

With reference to your letter No L 8156/M1 2-27-187 (confidential) dated 15th May 1928, re the District Fund Toll gates, I write to inform you that the District Board have approved the establishment of toll gates in their meeting held in January 1928 and the Government have also accorded sanction in their order No L 5203-5/L B 52-27-28 dated 2nd March 1928 On the strength of both of these, the toll gates have been established and are working for the last 2 months

I may be permitted to state that the text of the complaint which appears to be the cause for the issue of the letter under reference could have been forwarded for the information of the Board and the Board called upon to offer their remarks before the issue of letter from government Some other District Boards have adopted the same rules and rates, and I do not think

The Pdt Dist. Bd Bangalore, THRO'
the Dy Comsnr Bangalore

Ms 52-27-28

Proceedings of the Government of
H H. the Maharaja of Mysore.

Read -

G.O.No.L.5703-5/L B.52-27-28 dated 2nd March 1928, sanctioning the proposal of the District Board, Bangalore, for the establishment of 10 Toll-gates on the several District Fund Roads mentioned therein.

Correspondence ending with letter No.A 111-552/27-28 dated, the 6th June 1928 from the President, District Board on the subject.

Circular Letter Camp No.53-69 dated 6th June 1928, to the Presidents of -- District Boards in regard to the disposal of the right to levy tolls at the several toll-gates in the Districts for the year 1928-29.

ORDER NO.L.

Dated, Bangalore, the 7 July 1928

Govt. are pleased to direct that the right to levy tolls on the several Toll-gates in the Bangalore District sanctioned in the Government Order read above be disposed of in accordance with the rates and conditions specified in Notification No.L.5707/L.B.217-27-1 dated 13th June 1928.

Sd/- Gel Secry to Govt.

To
The Pdt Dist. Bd. Bangalore, THRO'
the Dy. Comsr Bangalore